

# REPORTERS COMMITTEE

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FOR FREEDOM OF THE PRESS

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October 1, 2012

Corbin R. Davis  
Clerk of the Michigan Supreme Court  
P.O. Box 30052  
Lansing, MI 48909

*Re: Proposed Revision of Administrative Order No. 1989-1, Film or  
Electronic Media Coverage of Court Proceedings*

Dear Mr. Davis:

The Reporters Committee for Freedom of the Press submits the following comments in response to the June 7, 2012, proposed revision of Michigan's Administrative Order No. 1989-1. We thank you for this opportunity to comment.

The Reporters Committee is a voluntary, unincorporated association of reporters and editors that works to defend the First Amendment rights of and freedom of information interests of the news media. The Reporters Committee has provided representation, guidance, and research in First Amendment and Freedom of Information Act litigation since 1970. As advocates for the rights of the news media and others who gather and disseminate information about issues that affect the public, we have a strong interest in the policies governing the rights of journalists to monitor and report on the proceedings of court systems nationwide.

As such, the Reporters Committee commends the Michigan Supreme Court for its proposed expansion of Administrative Order No. 1989-1, which serves this interest. It widens opportunity for meaningful public access to courtroom proceedings while generally protecting the interests of judges, parties, and lawyers. Although we commend the Court for its proposal, we observe that a right of appeal for when trial judges limit electronic media coverage would more fully serve this interest.

## **I. Access to courts is a recognized right that benefits the public and the judicial system.**

Courts have long recognized that public access to courtroom proceedings provides benefits to both the judicial system and the public. In *Globe Newspapers Co. v. Superior Court*, 457 U.S. 596, 606 (1982), the Supreme Court observed that the right of public access to criminal trials “plays a particularly significant role in the functioning of the judicial process and the government as a whole.” Increased public access to judicial proceedings “enhances the quality and safeguards the integrity of the fact-finding process,” *id.*, by discouraging perjury, the misconduct of participants, and

decisions based on secret bias or partiality. See *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 569 (1980) (plurality opinion). The Court has held that public access “heighten[s] public respect for the judicial process” and allows the public to “participate in and serve as a check upon the judicial process—an essential component in our structure of self government.” *Globe Newspaper Co.*, 457 U.S. at 656.

The public benefits greatly from increased access to the judicial process. The Supreme Court has observed that there is a “therapeutic value” to the community by allowing it to reconcile conflicting emotions about high-profile cases. *Richmond Newspapers, Inc.*, 448 U.S. at 570. Additionally, public access reassures the public that its government is working properly and correctly, and it enhances public knowledge and understanding of the court system. *Id.*

More recently, the public has relied greatly on the news media as its surrogate at courtroom proceedings. The Supreme Court has noted that people get information about the court system “chiefly through the print and electronic media.” *Id.* at 573. Allowing cameras to take the courtroom to the people, either in part or in whole, allows the media to best serve as public surrogates by providing unfiltered access to the judicial system. Viewing courtrooms through the lens of a camera allows the public to get as close to the courtroom as possible and directly observe the administration of justice. See, e.g., *Morris Comm’ns, LLC v. Griffin*, 620 S.E. 800, 802 (Ga. 2005). (“A camera generally will increase the openness of a judicial proceeding[.]”)

Importantly, these benefits come with only minor drawbacks. Technological advances have largely eliminated the concern that cameras create a physical disturbance in courtrooms. Cameras now operate in near silence, without bright lights, and can easily blend in during a court proceeding. As the New Hampshire Supreme Court has noted, a number of studies have reached the same conclusion: Cameras in the courtroom cause limited, if any, physical distractions. *In re Petition of WMUR Channel 9*, 813 A.2d 455, 459 (N.H. 2002) (“Advances in modern technology, however, have eliminated any basis for presuming that cameras are inherently intrusive. In fact, the increasingly sophisticated technology available to the broadcast and print media today allows court proceedings to be photographed and recorded in a dignified, unobtrusive manner, which allows the presiding justice to fairly and impartially conduct court proceedings.”)

## **II. The presumption of electronic media will promote public access while respecting procedural safeguards.**

The proposed expansion of Administrative Order No. 1989-1 creates a presumption of electronic media coverage in appellate court proceedings, which ensures public access while still respecting procedural safeguards. The presumption of access does not prevent Michigan’s appellate courts from limiting court access for “good cause,” which is detailed in MCR 8.116(D).

This procedural guideline preserves the court’s ability to balance the right of public access against other factors affecting the administration of justice, including the parties’

rights, privacy and safety concerns, the risk of distraction, and the adequacy of courtroom facilities. *See also In re WLBT, Inc.*, 905 So.2d 1196, 1199 (Miss. 2005) (“[P]rohibiting cameras does restrict the ability of the public to access the proceedings, and ... the complete exclusion of cameras should be resorted to only after less restrictive measures have been considered and found to be inadequate.”).

**III. Specific court findings and a right of appeal promote public access and judicial administration, but the right could be stronger.**

Under the amended regulation, if an appellate court limits film or electronic coverage of a proceeding, the person or entity that requested coverage may appeal that decision. Under MCR 8.116(d), an appellate court must state on the record the specific reasons for its decision to limit access to a proceeding. This ensures that well-informed decisions are made and that media parties are able to understand a court’s rationale for its decision.

The right of appeal further ensures that the proper legal standards are followed in consideration of a request to allow film or electronic coverage of a proceeding. We commend this step toward transparency and openness, while again observing that allowing an appeal of a *trial judge’s* decision to exclude film or electronic media coverage, as the proposed revision does *not* do, would also further these goals. We recognize the delays that can arise in trial proceedings when interlocutory matters are appealed. The Court could allay these concerns by providing for an appeal to the chief judge of a particular judicial circuit or district, or providing that trial proceedings can continue while the camera issue is before an appellate court.

We thank you for the opportunity to comment on the Michigan Supreme Court’s Proposed Revision of Administrative Order No. 1989-1. The Reporters Committee supports the revision and commends the Court for its recognition of the important interests underlying the public and news media’s right of access to judicial proceedings.

Sincerely,

/s/ Bruce D. Brown

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The Reporters Committee for Freedom of the Press